FILED
MAR 4 1942

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

Nos. 134-36

In the Matter of

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

Debtor.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

Petitioner,

vs.

MUTUAL SAVINGS BANK GROUP COMMITTEE, et al.,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HELEN W. MUNSERT,
LUTHER M. WALTER,
Attorneys for Chicago and North Western Railway Company, Debtor, Petitioner.

March 4, 1942.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

INDEX.

	PAGE
Summary Statement of the Matter Involved	2
(a) Nature of the proceedings	2
(b) Historical statement of plan of reorganization	3
(c) The primary issue	12
Opinions Below	18
Jurisdictional Statement	18
Statutes Involved	18
Questions Presented	18
Reasons Relied on for the Allowance of the Writs	19

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

Summary of Argument	24
Argument	25
I. The findings made by the Interstate Commerce Commission are wholly insufficient to enable the Court to perform its function under Section 77 of the Interstate Commerce Act	26
II. The Court may not substitute the results of balloting by creditors for (a) the failure of the Commission to make necessary findings and for (b) the informed, independent judgment of the Court as to whether the plan of reorganization is fair and equitable	36
III. The plan of reorganization as approved and confirmed is not fair and equitable and does not meet the tests required by the law of the land	41
Conclusion	47
Appendix	49

134525

Table of Cases.

PAGE

Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 84 L. Ed. 110 ..... 14, 15, 20, 31, 36, 41

Consolidated Rock Products Company v. DuBois, 312 U. S. 510, 85 L. Ed. 982 ..... 21, 26

In re Chicago, Milwaukee, St. Paul & Pacific Railroad Company, 124 F. (2d) 754 ..... 3, 13, 20, 21, 25, 26, 29, 31, 33, 35, 36, 41

In re The Western Pacific Railroad Company, Debtor, 124 F. (2d) 136 21

In the Matter of The New York, New Haven and Hartford Railroad Company, Debtor, December 8, 1941, unreported 46

Other Authorities.

Hearings Before the Committee on the Judiciary, House of Representatives, 74th Congress, First Session on H. R. 6249, April 15, *et seq.*, 1935, 22... 40

Statutes Cited.

Section 77 of the Bankruptcy Act as Amended..... 37

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

Nos.

In the Matter of

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

Debtor.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

Petitioner,

vs.

MUTUAL SAVINGS BANK GROUP COMMITTEE, et al.,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Chicago and North Western Railway Company, Debtor, respectfully prays the issuance of writs of certiorari to review the judgments of the United States

Circuit Court of Appeals for the Seventh Circuit entered on February 9, 1942, affirming the orders and decrees of the District Court for the Northern District of Illinois, which had approved the plan of reorganization for the Debtor certified by the Interstate Commerce Commission, denied the motion of the Debtor to refer the plan back to the Interstate Commerce Commission for a determination and certification of values, and confirmed the said plan of reorganization.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

(a) Nature of the proceedings.

On June 28, 1935, petitioner, Chicago and North Western Railway Company, a railroad corporation operating as a common carrier of passengers and property in the states of Illinois, Wisconsin, Michigan, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, and Wyoming, filed its petition (Tr. 2-7) in the District Court of the United States for the Northern District of Illinois, Eastern Division, seeking to reorganize under Section 77 of the Bankruptcy Act. A plan of reorganization approved by the Interstate Commerce Commission was filed in said Court on December 19, 1939 (Tr. 3503); a supplemental report and order (Tr. 3661) was filed April 8, 1940, in said Court by the Commission, modifying said plan of reorganization and approving the plan as modified.

On October 12, 1940, the District Court entered an order approving said plan of reorganization (Tr. 5072), and also entered an order (Tr. 5093) denying the motion of this petitioner, Chicago and North Western Railway Company, hereinafter referred to as the Debtor, to refer the plan back to the Interstate Commerce Commission for

determination and certification of values, in accordance with the requirements of the final paragraph of Section 77 (e). On June 27, 1941, the District Court entered its decree (Tr. 5591) confirming said plan of reorganization.

On February 9, 1942, the United States Circuit Court of Appeals for the Seventh Circuit affirmed the orders and decree above referred to and overruled all objections by appellants to the plan of reorganization. The principal ground of affirming the orders and decree, distinguishing the grounds for reversal in the case of *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Company,* 124 F. (2d) 754, decided December 4, 1941, by the same Court, is that in the instant case the creditors had received the plan and voted almost unanimously their approval of such plan. (Tr. 5809)

(b) Historical statement of plan of reorganization.

The petition of the Debtor, filed June 28, 1935, stated that on the first day of May, 1935, interest on Debtor's convertible bonds of 1949 became due and payable; that Debtor was without funds with which to pay said interest, had no means of procuring funds with which to meet interest charges, and desired to effect a plan of reorganization pursuant to Section 77, Chapter VIII of the Acts of Congress relating to bankruptcy. (Tr. 2-7) On the same day the District Judge entered an order approving the said petition as properly filed under said Acts and directing the Debtor, pending further decision of the Court, to manage, operate, etc., the railroad and properties of the Debtor wherever situated. (Tr. 7-12)

Later, trustees were appointed and Honorable Charles M. Thomson, Trustee, is now in custody of, and operating, the properties of the Debtor. The Chicago and

North Western Railway Company, only, filed a petition for reorganization. The Chicago, St. Paul, Minneapolis & Omaha Railway Company, hereinafter referred to as the Omaha, is unable to pay its debts as they mature, but all of its funded debt, except $353,000 of equipment-trust certificates, is owned by the Chicago and North Western Railway Company, and the latter has extended it the needed credits. The Chicago and North Western Railway Company owns $17,456,400 of the $18,556,767 of the outstanding common stock, $10,469,600 of the $11,-259,300 of outstanding preferred stock, $144,000 (as of December 31, 1937) of the equipment-trust certificates, and the entire issue, $46,186,000, of the first mortgage bonds of the Omaha. It also owns the entire issue, $50,000, of the capital stock and the entire issue, $1,350,000 (matured 1920), of the first mortgage bonds of the Escanaba, Iron Mountain & Western Railroad Company, which mortgage is the latter's only funded debt. It had no proprietary interest in the Oshkosh Transportation Company at the time of the hearings on approval of the plan, but on January 28, 1941, was granted leave to purchase all of the outstanding capital stock of said company and has since done so. (Tr. 5275) The Chicago, St. Paul, Minneapolis & Omaha Railway owns $5,000 of the general mortgage bonds of the Chicago and North Western Railway Company. The Escanaba, Iron Mountain & Western Railroad Company and the Oshkosh Transportation Company are operated under lease by the North Western. The Chicago, St. Paul, Minneapolis & Omaha Railway Company is separately operated. (Tr. 3518-19)

As of January 1, 1938, the securities of the four companies issued or assumed and actually outstanding in the hands of the public, were as follows (Tr. 3519-20):

General Mortgage Bonds of 1987	$132,011,500
Fifteen-Year 6½% Secured Bonds matured 1936	14,775,000
First and Refunding Mortgage Bonds of 2037	47,822,000
Public Works Administration Notes	1,360,000
Twenty-Year Convertible Bonds of 1949	72,335,000
Equipment Obligations	14,973,000
Notes to Reconstruct Finance Corporation	42,250,133
Demand Loan for Sioux City Bridge Company	518,961
5% Notes to 16 Banks	4,439,690
Notes to Railroad Credit Corporation	653,681
Milwaukee & State Line Bonds of 1941	2,500,000
Manitowoc, Green Bay & North Western Railway First Mortgage 3½% Bonds of 1941	3,750,000
St. Paul Eastern Grand Trunk Railway First Mortgage 4½% Bonds of 1947	1,120,000
Milwaukee, Sparta & North Western First Mortgage 4% Bonds of 1947	15,000,000
Des Plaines Valley Railway First Mortgage 4½% Bonds of 1947	2,500,000
St. Louis, Peoria & North Western Railway First Mortgage 5% Bonds of 1948	10,000,000
Sioux City & Pacific Railroad First Mortgage 3½% Bonds matured 1936	4,000,000
Chicago, St. Paul, Minneapolis & Omaha Railway Equipment Obligations	353,000
Total principal amount of debt securities	$370,361,965

Capital stock outstanding in the hands of the public as of January 1, 1938, was as follows (Tr. 3520):

Chicago and North Western Railway Company Preferred Stock	$ 22,395,000
Chicago and North Western Railway Company Common Stock	158,440,300
Chicago, St. Paul, Minneapolis & Omaha Railway Company Preferred Stock	789,700
Chicago, St. Paul, Minneapolis & Omaha Railway Company Common Stock	1,100,300
Oshkosh Transportation Company Common Stock	70,000
	$182,795,300

The foregoing list does not include funded debts matured and unpaid, which have not been presented for payment, amounting to $12,500 as of said date, nor does

it include stock liability for conversion, scrip, and premium on capital stock. (Tr. 3521)

The total of securities outstanding in the hands of the public, exclusive of the Oshkosh Transportation Company, of amounts owed to general creditors, and of interest matured and still unpaid, is $615,742,758 as of January 1, 1939, and apparently represents all liabilities actually outstanding which must be taken into account in the new capital structure and is exclusive of claims for additional interest not accrued on the books. (Tr. 3521)

The notes to the Reconstruction Finance Corporation were secured as of December 31, 1937, by a pledge of Chicago and North Western securities in the aggregate amount of $49,769,000, of securities of the Chicago, St. Paul, Minneapolis & Omaha aggregating $45,330,000, and of various other railroad bonds, stocks, and capital stock of the Superior Coal Company aggregating $6,714,800, or a total collateral of $101,813,800. (Tr. 3525)

The $4,439,690 of 5 per cent notes to the various banks, which matured in 1936, are secured by a pledge of Chicago and North Western Railway Company bonds in the aggregate amount of $16,108,000 and Union Pacific Railroad Company preferred stock aggregating $2,085,000, or a grand total of such collateral of $18,193,000. (Tr. 3526)

The $653,681 of notes to the Railroad Credit Corporation, which matured in 1935 and 1936, are secured by a pledge of Chicago and North Western first and refunding bonds of 2037 in the amount of $6,021,000 and Chicago, St. Paul, Minneapolis & Omaha Railway Company bonds in the amount of $1,000,000, or a total collateral of $7,021,000. These notes were further secured by the interest of the Debtor and of the Omaha in the fund administered under the marshalling and distributing plan,

and by the equity of the Debtor in Reconstruction Finance Corporation collateral above set forth. (Tr. 3526)

The Debtor filed with the Commission a plan of reorganization to be made effective January 1, 1938, under which the present corporate organization would be retained. (Tr. 3527)

Under the Debtor's proposed plan, the outstanding securities of the corporation immediately following reorganization would be as follows (Tr. 3536):

Equipment-trust certificates	$ 14,973,000	
Public Works Administration loan	1,360,000	
Four per cent secured serial notes	50,000,000	
		$ 66,333,000
Four per cent income bonds		132,409,219
Total interest bearing securities		$198,742,219
Class A four per cent preferred stock	$132,409,218	
Class B four per cent preferred stock	88,808,301	
		$221,217,519
Class C four per cent preferred stock		11,197,500
Total preferred stock		$232,415,019
No par value common stock		39,610,050
Total stock		$272,025,069
Total capitalization		$470,767,288

The plan of reorganization proposed by the Life Insurance and Savings Bank Group Committees contemplated the retention of control of the Omaha by the reorganized company through the ownership of Omaha securities. (Tr. 3537)

Under the committees' plan, the capitalization of the reorganized company upon consummation of the plan as of January 1, 1938, would be approximately as follows (Tr. 3538-39):

UNDISTURBED OBLIGATIONS:	
Equipment obligations	$ 14,973,000
Public Works Administration loan (after curing defaults)	1,190,000
Total undisturbed	$ 16,163,000
NEW SECURITIES ISSUED:	
10-year collateral-trust note	$ 700,000
15-year collateral-trust notes	2,914,000
New first mortgage bonds, series A	* 122,152,000
New general mortgage convertible income bonds, series A	104,799,000
New preferred stock, series A	91,699,000
New common stock, without par value, shares	* 1,110,780

* Including securities issued to finance subsequent expenditure in the rehabilitation and improvement program.

Assuming a value of $100 per share of the common stock, the aggregate capitalization would be $449,505,000. (Tr. 3539)

The plan of reorganization approved by the Commission and by the Court is summarized by the Commission as follows (Tr. 3676):

Fixed interest obligations	Principal	Fixed Interest
Undisturbed obligations	$ 12,698,000	$ 470,095
10-yr. serial note to R.C.C.	663,000	26,520
15-yr. serial notes to banks	3,296,000(a)	82,400
15-yr. secured notes to R.F.C.	25,000,000(a)	625,000
Sioux City divisional bonds	4,000,000	160,000
Des Plaines divisional bonds	2,500,000	100,000
First and general mtge. bonds, A	55,762,556(a)	1,394,064
First and general mtge. bonds, B (@ 4%)	13,100,000	524,000
	$117,019,556	$3,382,079

(a) This issue bears 4½% interest, of which 2½% will be fixed and 1½% contingent but commutable into fixed interest.

Other requirements	Principal	Charges or Dividends
Sinking fund (divisional bonds).....		$ 32,500
Additions & betterments fund (minimum)		2,500,000
15-yr. serial notes to banks.....	(a)	49,440
15-yr. secured notes to R.F.C.....	(a)	375,000
First and general mtge. bonds, A.....	(a)	836,438
Second mtge. income bonds, A.....	$105,058,904	4,727,651
Sinking fund (income bonds).....		525,295
Total fixed and contingent.....	$222,078,460	$12,428,403
Preferred stock	$106,996,076	$ 5,349,804
Common stock	120,899,773	
Total capitalization	$449,974,309	
Total charges ahead of dividends on common stock		$17,778,207
(Ratio of debt to total capitalization.....	49.35%)	

Opposite this page we reprint for convenience a table showing outstanding obligations and stock of the Debtor, and the distribution of new securities taken from the Commission's report. (Tr. 3677)

The issues involved in these consolidated appeals arise under the orders of the District Court (a) refusing to remand the proceedings to the Commission for determination and certification of value, (b) approving the plan of reorganization as modified, and (c) confirming the plan of reorganization. The issues raised by the appeals from the approval and confirmation orders are practically identical, with the exception that in the appeal from the confirmation order there is the additional question as to whether the submission by the Commission to the creditors of the plan of reorganization, as approved by the Court, and the approval and consent by such creditors, was in accordance with law. (Tr. 4924-25)

The District Court held hearings on objections to the plan of reorganization and on claims for equitable treatment by the Debtor in respect thereto, on June 24-27, 1940. (Tr. 4084) Oral and documentary evidence was introduced before the Court in addition to the record made before the Interstate Commerce Commission.

A motion by the Debtor (Tr. 5562) to refer the plan back to the Interstate Commerce Commission for a determination and certification of value was denied by the District Court. The orders of the District Court and its opinion are set forth in the record at pages 5569 and 5583.

Opposition of the creditor interests and of the Interstate Commerce Commission to payment of the costs out of the estate resulted in a delay in perfecting the appeal from the orders of the District Court approving the plan and denying the motion to refer the plan back to the Interstate Commerce Commission for a determination and

Outstanding Obligations and Stock

		Amount as of December 31, 1938		
		Principal	Unpaid Interest	Total
1.	Equipment trusts	$ 11,678,000	$	$ 11,678,000
2.	General 3½%	31,316,000	4,019,096	35,335,096
3.	General 4%	30,554,000	4,481,355	35,035,355
4.	General 4½%	5,791,000	955,515	6,746,515
5.	General 4¾%	23,663,000	4,121,384	27,784,384
6.	General 5%	40,695,000	7,461,022	48,156,022
7.	Secured 6½%	14,775,000	3,681,437	18,456,437
8.	Sioux City 1st 3½%	4,000,000		4,000,000
9.	State Line 1st 3½%	2,500,000	350,000	2,850,000
10.	Manitowoc 1st 3½%	3,750,000	525,000	4,275,000
11.	St. Paul Eastern 1st 4½%	1,120,000	201,600	1,321,600
12.	Sparta 1st 4%	15,000,000	2,300,100	17,300,100
13.	Des Plaines 1st 4½%	2,500,000		2,500,000
14.	Peoria 1st 5%	10,000,000	2,000,000	12,000,000
15.	First and refunding 4½%	32,572,000	5,252,235	37,824,235
16.	First and refunding 5%	15,250,000	2,732,343	17,982,343
17.	P.W.A. loan (after curing defaults)	1,020,000		1,020,000
18.	R.C.C. loan	653,681	9,805	663,486
19.	R.F.C. loan	42,250,133	6,934,772	49,184,905
20.	Banks' loan	4,439,690	590,258	5,029,948
21.	Convertible debentures, 4¾%	72,335,000	14,316,302	86,651,302
22.	Sioux City Bridge Co. loan, 4¾%	518,961	76,415	595,376
23.	General creditors (estimated)	5,000,000		5,000,000
24.	New money (for rehabilitation program)			
25.	Total debt	371,381,465	60,008,639	431,390,104
26.	Preferred stock	22,395,000		22,395,000)]
27.	Common stock	158,440,200		158,440,200)]
28.	Total stock	180,835,200		180,835,200

Totals—Reorganized Company

(a) Estimated proceeds from sale of
(b) Bears 4% interest, of which 2½

CHICAGO AND NORTH WESTERN RAILWAY COMPANY REORGANIZATION

Finance Docket No. 10881

DISTRIBUTION OF NEW SECURITIES

Total	Cash or equivalent (a)	Undisturbed	4%, 10-yr. serial secured notes to R.C.C.	15-yr. secured serial notes to Banks (b)	15-yr. secured notes to R.F.C. (b)	Sioux City & Pacific Division first mtge. bonds, 4%
$ 11,678,000	$	$11,678,000	$	$	$	$
35,335,096						
35,035,355						
6,746,515						
27,784,384						
48,156,022						
18,456,437						
4,000,000						4,000,000
2,850,000						
4,275,000						
1,321,600						
17,300,100						
2,500,000						
12,000,000						
37,824,235						
17,982,343						
1,020,000		1,020,000				
663,486			663,000			
49,184,905					25,000,000	
5,029,948	1,733,948			3,296,000		
86,651,302						
595,376						
5,000,000						
431,390,104						
22,395,000)	Equity found to					
158,440,200)	have no value					
180,835,200						
any	1,733,948	12,698,000	663,000	3,296,000	25,000,000	4,000,000

from sale of U.P R.R. Co. stock pledged under present loan.
of which 2½% will be fixed and 1½% contingent but commutable into fixed interest.

Des Plaines Valley Division first mtge. bonds, 4%	First and general mtge. bonds series A (b)	First and general mtge. bonds series B	Second mtge. convertible income bonds series A, 4½%	Preferred stock, series A, 5%	Common Stock, no-par (stated at $100 a share)	Total allowed
$	$	$	$	$	$	$11,678,000
	6,200,568		14,499,308	13,371,932	1,252,640	35,324,448
	6,171,908		14,360,380	13,260,436	1,252,714	35,045,438
	1,187,155		2,768,098	2,548,040	243,222	6,746,515
	4,898,241		11,381,903	10,506,372	993,846	27,780,362
	8,464,560		19,737,075	18,190,665	1,749,885	48,142,185
	3,693,750		8,599,050	7,934,175	753,525	20,980,500
						4,000,000
	777,500		1,112,500	960,000		2,850,000
	1,406,250		1,496,250	1,372,500		4,275,000
					1,321,600	1,321,600
	3,600,000		4,065,000	4,950,000	4,680,000	17,295,000
2,500,000						2,500,000
	4,280,000		3,880,000	3,840,000		12,000,000
	4,950,944		7,491,560	9,836,744	15,536,844	37,816,092
	2,348,500		3,553,250	4,081,750	7,396,250	17,979,750
						1,020,000
						663,000
	7,783,180		12,114,530	15,543,462	23,259,836	83,701,008
						5,029,948
					45,860,390	45,860,390
					329,021	329,021
					3,170,000	3,170,000
		13,100,000			13,100,000	26,200,000
2,500,000	55,762,556	13,100,000	105,058,904	106,996,076	120,899,773	451,708,257

certification of values, until July 16, 1941, the Debtor having had no funds of its own with which to prosecute such appeals.

During that period of approximately nine months, the Debtor had been actively trying to restrain the confirmation until the orders appealed from had been considered by the Circuit Court of Appeals. On April 3, 1941, it filed a motion in the Circuit Court of Appeals (Tr. 5713-17), seeking an order directed to the Interstate Commerce Commission to withhold certification of the results of the balloting by the creditors on the plan of reorganization. That motion was denied on April 11, 1941. (Tr. 5743-45) Another motion was filed on May 29, 1941, with the Circuit Court of Appeals (Tr. 5752-57), to stay all proceedings leading to confirmation until the decision of the questions involved in the appeals from the orders of October 12, 1940. The Circuit Court of Appeals denied said motion on June 18, 1941. (Tr. 5784)

The results of the balloting having been certified by the Commission and filed with the District Court on May 16, 1941, the Court proceeded to hold a hearing on the confirmation of the plan, at the beginning of which the Debtor filed a petition for rejection of such certification; the motion for such rejection was denied by the District Court on June 23, 1941. (Tr. 5558, 5561) Prior to the beginning of the hearing, Debtor had filed a motion to stay confirmation which was denied that same day, June 23, 1941. (Tr. 5374, 5375) It also filed another motion to refer the case back to the Interstate Commerce Commission, which motion was denied June 27, 1941. (Tr. 5583) The order of confirmation was also entered on June 27, 1941. (Tr. 5591)

To summarize, appeals were taken by the Debtor from the orders of October 12, 1940, approving the plan of re-

organization and denying the motion of the Debtor to refer the plan back to the Interstate Commerce Commission for a determination and certification of value of the Debtor's properties, and from the decree of June 27, 1941, confirming said plan of reorganization.

Eighteen appeals in the aggregate were heard by the United States Circuit Court of Appeals for the Seventh Circuit arising out of the reorganization proceedings, and were disposed of in the opinion of the Court of February 9, 1942. (Tr. 5785-5816) On February 20, 1942, the United States Circuit Court of Appeals entered an order that the mandates of that Court be stayed for a period of sixty days, and that if within such sixty days there is filed with the Clerk of said Court a certificate of the Clerk of the Supreme Court certifying that the certiorari petition, record, and brief have been filed, the stay of mandate shall continue until final disposition of this matter by the Supreme Court. (Tr. 5825)

This petition for writs of certiorari is from the order entered by the United States Circuit Court of Appeals for the Seventh Circuit on February 9, 1942, affirming the order of the District Court of October 12, 1940, approving the plan of reorganization, affirming the order of October 12, 1940, denying Debtor's motion to refer the plan of reorganization back to the Interstate Commerce Commission for a determination and certification of value of Debtor's properties, and affirming the order of June 27, 1941, confirming the plan of reorganization.

(c) The primary issue.

The primary issue in this appeal is whether the Circuit Court of Appeals is correct in holding that it will not go beyond the expressed assent and approval of the bondholders to ascertain whether or not a plan of reorganiza-

tion is fair and equitable. That Court in *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Company,* 124 F. (2d) 754, held on December 4, 1941, that the Court could not pass intelligently on the fairness of the plan of reorganization and the reasonableness of the allocation of new securities among holders of old securities because the Interstate Commerce Commission had failed to make findings of values in sufficient detail. In the instant case the Court said (Tr. 5805):

> "While fairness is a somewhat relative term and is not measurable, in its practical application, with mathematical certainty, courts will not go beyond the expressed assent and approval of the bondholders to ascertain whether fairness in distribution attained the goal of perfection. If the creditors who are to share an insolvent estate understandingly agree on a division thereof, the problem of the court has been solved."

As further illustration of the views of the Circuit Court of Appeals, we quote the following paragraph from its decision herein of February 9, 1942 (Tr. 5808):

> "It is not a question of a necessary majority (two-thirds). The majority in each group, in the case before us, was far greater than the minimum requirement. It is a question of whether the report of the I.C.C., which was full and complete, fair and open, but lacking in one respect,—failure to make specific findings of values,—may, or should, be approved without said findings. In fact, the issue may be stated even more strongly against the minority. Does not the vote of approval supply the proof that the report of the Commission contained the evidence, and the Commission's finding sufficiently states the facts, to justify us in holding that separate and more detailed findings are unnecessary? We think it does."

That the Circuit Court of Appeals failed to exercise an informed and independent judgment to determine whether the plan is fair and equitable, is shown by these two paragraphs of the opinion (Tr. 5809):

> "Could these bondholders not waive a requirement that the I.C.C. fix value of the property covered by each mortgage? We think they could. Could they not waive the necessity of the I.C.C.'s making more specific findings? They could, and did. No objecting creditor, *at the time*, objected to the I. C. C.'s failure to separate its findings or to make separate coverage of specific property. If they felt the task was too great, or the results no better than the deductions which the apportionment of new securities indicated, we would not condemn them for their neglect, but say they were practical men who realized that additional specific findings would not change the result nor make the court's study much more intelligent.
>
> "In short, we hold, the approval of the plan differentiates this case from the Milwaukee case. It was an equivalent of a waiver of more specific findings by all who approve the plan. It also supplied the proof that the report gave the bondholders sufficient facts to understand and appraise the worth of the plan."

The Court of Appeals, while citing the decision of this Court in *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106, 84 L. Ed. 110, in support of (1) its holding that the Court is required to exercise its judgment upon the soundness of estimated revenues in a normal year, and (2) the statement that the bankruptcy amendment of 1932 was intended to defeat the efforts of nuisance value makers, who were no more popular with Congress than they had been with the courts (Tr. 5808), wholly overlooked and ignored that portion of the opinion by Mr. Justice Douglas in that case, wherein it is stated (page 114-5 of 308 U. S.):

> "At the outset it should be stated that where a plan is not fair and equitable as a matter of law it cannot

be approved by the court even though the percentage of the various classes of security holders required by §77B(f) for confirmation of the plan has consented. It is clear from a reading of §77B(f) that the Congress has required both that the required percentages of each class of security holders approve the plan and that the plan be found to be 'fair and equitable.' The former is not a substitute for the latter. The court is not merely a ministerial register of the vote of the several classes of security holders. All those interested in the estate are entitled to the court's protection. Accordingly the fact that the vast majority of the security holders have approved the plan is not the test of whether the plan is a fair and equitable one. This is in line with the decision of this Court in *Taylor* v. *Standard Gas & E. Co.*, 306 U. S. 307, 83 L. Ed. 669, 59 S. Ct. 543, 38 Am. Bankr. Rep. (N.S.) 692, which reversed an order approving a plan of reorganization under §77B, in spite of the fact that the requisite percentage of the various classes of security holders had approved it, on the ground that preferred stock of the debtor corporation was inequitably treated under the plan. The contrary conclusion in such cases would make the judicial determination on the issue of fairness a mere formality and would effectively destroy the function and the duty imposed by the Congress on the district courts under §77B. That function and duty are no less here than they are in equity receivership reorganizations, where this Court said, 'Every important determination by the court in receivership proceedings calls for an informed, independent judgment.' *National Surety Co.* v. *Coriell*, 289 U. S. 426, 436, 77 L. Ed. 1300, 1305, 53 S. Ct. 678, 88 A. L. R. 1231.

"Hence, in this case the fact that 92.81% in amount of the bonds, 99.75% of the Class A stock, and 90% of the Class B stock have approved the plan is as immaterial on the basic issue of its fairness as is the fact that petitioners own only $18,500 face amount of a large bond issue."

It thus clearly appears that the decision of the Circuit Court of Appeals was directly in conflict with the rule laid down in the *Los Angeles Lumber Products* case, *supra*.

The Debtor contended in the Circuit Court of Appeals that the decree of confirmation was erroneous in that the acceptances of the plan had been made and procured by means forbidden by law. That question is not discussed or referred to in the opinion of the Circuit Court of Appeals. In that opinion there is a "Table on Vote of Various Class of Creditors on Plan," showing the class, name of security, total amount of each outstanding, the amount of each security voted, and the percentage of the vote in favor of the plan, but there is no showing of ratio of securities held by the Insurance Group and the Savings Bank Group, to the total outstanding securities, nor the percentage of such holdings to the total vote for acceptance of the plan. Nor does the opinion of the Court note that, as hereinafter appears in detail, only 62.7 per cent of creditors authorized to vote on the plan, in the aggregate, voted to accept the plan and of these the Life Insurance Group and Savings Bank Group held 53 per cent.

Certainly a vote of acceptance under the circumstances shown in this record is no substitute for the informed, independent judgment of the Court in determining that a plan of reorganization is fair and equitable.

The principal issues involved in the Debtor's appeals from the orders refusing to remand the proceedings to the Commission to determine value, approving the plan, and confirming the plan, may be briefly stated as follows:

1. The District Court erred in not remanding the proceedings to the Commission for a determination and certification of value. (Tr. 5093)

2. The District Court should have sustained the objections filed by the Debtor to the plan of reorganization. (Tr. 4000-16)

   a. Capitalization reserved for rehabilitation and improvement programs should be available for other purposes.

b. The Commission's forecast of earnings in a normal year is wholly unfounded and unacceptable as a basis for capitalization of the reorganized company.

c. The Commission erred in refusing to consider a plan of consolidating the properties of the Debtor and of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

d. The plan of reorganization should be effective as of the date of filing of the petition. (Tr. 5111-15)

3. No interest is allowable on a claim after the date upon which the petition for reorganization was filed in the District Court.

4. The Court erred in holding that the Commission's failure to advise creditors (in submitting the plan of reorganization for balloting) that appeals had been taken and were pending from the order of the District Court approving the plan of reorganization, did not invalidate the results of the balloting.

5. The Court erred in holding that the Savings Bank Group and the Insurance Company Group, holding bonds in large amounts of each of the several classes of creditors, were entitled to vote all their holdings in each class affirmatively and to have the same counted as acceptance of the plan of reorganization.

6. The plan of reorganization as approved and confirmed takes the property of the Debtor, of the holders of its convertible bonds of 1949, and of its preferred and common stockholders, without due process of law, and takes that property for public use without just compensation, in violation of the Fifth Amendment to the Constitution of the United States.

7. The Court erred in excluding the document marked "Debtor's Exhibit 74, For Identification," offered by the Debtor through its witness, Patrick B. McGinnis. (Tr. 4921-25)

Opinions below.

The original report and order of the Interstate Commerce Commission dated December 12, 1939, is reported at 236 I. C. C. 575 (Tr. 3503), and the supplemental report and order decided April 2, 1940, is reported at 239 I. C. C. 613 (Tr. 3661). The opinion of the District Court approving the plan of reorganization and denying Debtor's motion to refer the plan back to the Commission for a determination of values, is reported at 35 F. Supp. 230. (Tr. 5007-5055) The opinion of the Circuit Court of Appeals has not yet been reported.

Jurisdictional statement.

The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. (28 U. S. C. A. Sec. 347 (a).) The judgments of the Circuit Court of Appeals sought to be reviewed were entered on February 9, 1942.

Statutes involved.

The issues involve the construction and application to the facts of this case of Section 77 of the Bankruptcy Act as amended. (11 U. S. C. A. Sec. 205.)

Questions presented.

1. May the Court confirm a plan of reorganization solely on the ground that the creditors have accepted such plan of reorganization?

2. Under the circumstances disclosed of record, should the Court require the Interstate Commerce Commission to make findings of values as required by the final paragraph of Section 77(e)?

3. Should the District Court have sustained Debtor's objections to the plan of reorganization?

4. Is interest allowable on a claim after the date upon which the petition for reorganization was filed in the District Court?

5. Does the Commission's failure to advise creditors (in submitting the plan of reorganization for balloting) that appeals had been taken and were pending from the order of the District Court approving the plan of reorganization, invalidate the acceptances by creditors of such plan of reorganization?

6. Did the District Court err in holding that the Savings Bank Group and the Insurance Company Group, holding bonds in large amounts of each of the several classes of creditor groups, were entitled to vote all their holdings in each class affirmatively and to have the same counted as acceptances of the plan of reorganization?

7. Does the plan of reorganization, as approved and confirmed, take the property of the Debtor, of the holders of its convertible bonds of 1949, and of its preferred and common stockholders, without due process of law, and take that property for public use without just compensation, in violation of the Fifth Amendment to the Constitution of the United States?

8. Did the District Court err in excluding the document marked "Debtor's Exhibit 74, For Identification," offered by the Debtor through its witness, Patrick B. McGinnis?

Reasons relied on for the allowance of the writs.

1. The Circuit Court of Appeals has decided in this case an important question of Federal law arising in the administration of Section 77 of the Bankruptcy Act, which has not yet been but should be settled by this Court. In

affirming the decree of the District Court, the Circuit Court of Appeals definitely holds that a vote of the creditors relieves the Court of the necessity of determining, independent of such confirmation, that the plan of reorganization is fair and equitable. The Court even goes so far as to hold that it assumes the responsibility to represent creditors who did not vote and who have neither specifically objected to nor approved the plan, and, accepting that responsibility, votes the interests of such creditors in favor of the plan. The Court of Appeals voted the interest of the creditors in favor of the plan, as it states in its opinion, because (a) all the creditors of each group who have voted are overwhelmingly in favor of it, and (b) such a plan, if consummated, terminates these lengthy proceedings. The holding of the Circuit Court of Appeals in this respect is squarely in violation of the rule laid down by this Court in *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106, 84 L. Ed. 110.

2. The decision in the instant case by the Circuit Court of Appeals is squarely in conflict with the holding of the same Court in *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor,* decided December 4, 1941, 124 F. (2d) 754 (pending in this Court in Docket Nos. 875-883), reversing an order of the District Court approving a plan of reorganization, because the Interstate Commerce Commission had failed to make findings of fact sufficiently detailed to enable the Court to pass independently on the fairness of the plan of reorganization and the reasonableness of the allocation of new securities among holders of old securities. In that case the Circuit Court of Appeals reversed the decree of the District Court approving the plan, and remanded the proceedings to the Commission for necessary findings of value. The same failure to make necessary

findings of value exists in the case of the Debtor as in the case of the Milwaukee. The opinion of the Circuit Court of Appeals undertakes to differentiate the two cases by pointing out that the various groups of creditors had approved the plan of reorganization of the Debtor. No ballot on the plan of reorganization in the *Chicago, Milwaukee, St. Paul & Pacific Railroad Company* case was taken because the Circuit Court of Appeals itself entered an order restraining such balloting until the determination of the appeals from the order of approval. In the case of this Debtor, both the District Court and the Circuit Court of Appeals denied petitions of the Debtor for an order prohibiting further proceedings until the appeals from the order of approval by the District Court had been determined, and specifically for an order restraining the certification by the Interstate Commerce Commission of the results of the ballot.

The decision in the instant case is also squarely in conflict with the holding of the Circuit Court of Appeals for the Ninth Circuit in the case of *In re The Western Pacific Railroad Company, Debtor,* 124 F. (2d) 136, decided November 28, 1941, wherein the decree of the District Court approving the plan of reorganization for that railroad was reversed and remanded with directions to dismiss or, on motion of any party in interest, refer the proceeding back to the Commission for further action, the Commission having failed to make the necessary findings of value. That case is also before this Court on petition for writs of certiorari.

3. The failure and refusal of the Circuit Court of Appeals to require a determination and certification of values of the Debtor's properties is squarely in conflict with the final paragraph of Section 77(e) and of the decision of this Court in *Consolidated Rock Products Company* v.

DuBois, 312 U. S. 510, 85 L. Ed. 982, where this Court affirmed a decision of the Circuit Court of Appeals for the Ninth Circuit, which had reversed a decree of the District Court approving a plan of reorganization under Section 77B. In the opinion in that case by Mr. Justice Douglas, this Court found that no determination of the fairness of the plan of reorganization could be made because of the absence of requisite valuation data, and that, as a result of the absence of the valuation data, the Court was in no position to exercise the "informed, independent judgment," which appraisal of the fairness of a plan of reorganization entails.

4. The many questions of law raised by the objections to the plan of reorganization filed in the District Court present questions of great importance in determining the lawfulness of plans of reorganization of railroads under Section 77 of the Bankruptcy Act. No case of the many such cases now pending has yet been taken by this Court for final determination. Property interests in vast amounts and important questions of public interest are involved in the instant case. This Court should definitely and finally lay down the legal and equitable principles which should be applied by the Interstate Commerce Commission and the District Courts of the United States in determining and approving plans of reorganization under Section 77.

Wherefore, your petitioner respectfully prays that writs of certiorari be issued out of and under the seal of this honorable Court, directed to the Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and to send to this Court for its review on a day certain, to be therein named, a full and complete transcript of the record and all of the proceedings in the cases numbered on its docket, Nos. 7561, 7562, and 7724, and en-

titled *In the Matter of Chicago and North Western Railway Company, Appellant* v. *Mutual Savings Bank Group Committee, etc., et al., Appellees,* (*And other appeals*), and that the judgment of the Circuit Court of Appeals for the Seventh Circuit, and the decisions of the District Court may be reversed, and that your petitioner may have such other and further relief in the premises as to this Court may seem proper.

HELEN W. MUNSERT,
LUTHER M. WALTER,
Attorneys for Chicago and North Western Railway Company,
Debtor, Petitioner.